

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

<b>THOMAS BARTLETT WHITAKER</b>	§	
Petitioner	§	
	§	
VS.	§	CIVIL NO. 4:10-mc-00293
	§	
	§	*CAPITAL CASE*
<b>RICK THALER, Director</b>	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent	§	

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**PETITIONER'S MOTION TO WITHDRAW  
AND APPOINT NEW COUNSEL**

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TO THE HONORABLE JUDGE OF SAID COURT:

Undersigned counsel David A. Schulman and John G. Jasuta respectfully ask that they be permitted to withdraw and that this Court substitute David R. Dow and Katherine C. Black to represent Mr. Whitaker in federal habeas corpus proceedings. Mr. Dow and Ms. Black are willing to accept appointment in this case.

Thomas Bartlett Whitaker was sentenced to death March 8, 2007 in the 400th District Court of Fort Bend County, Texas. On June 24, 2009, the Texas Court of Criminal Appeals affirmed Mr. Whitaker's sentence on direct appeal. *Whitaker v. State*, 286 S.W.3d 355 (Tex. Crim. App. 2009). On June 30, 2010, the state court denied relief in state habeas corpus proceedings. *Ex parte Whitaker*, No. 73,421-01 (Tex. Crim. App. 2010) (unpublished).

On July 19, 2010, complying with his statutory obligation under TEX. R. CRIM. PROC. 11.071 § 2(e), Mr. Schulman filed with this Court a Motion to Appoint Counsel. On July 22, 2010, after conferring with both Mr. Whitaker and Mr. Schulman, Mr. Dow also filed a Motion for Appointment of Counsel. On August 4, 2010, this Court granted the Motion to Appoint Counsel filed by Mr. Schulman and Mr. Jasuta and denied the Motion for Appointment of Counsel filed by Mr. Dow.

Although Mr. Schulman (along with his co-counsel, Mr. John Jasuta) represented Mr. Whitaker in state habeas corpus proceedings, Mr. Whitaker has indicated that he desires to be represented by different counsel in federal habeas proceedings. For that reason, undersigned counsel wish to decline the appointment. To date, Mr. Schulman and Mr. Jasuta have not undertaken any additional work on behalf of Mr. Whitaker in connection with Mr. Whitaker's federal habeas proceedings; the substitution of counsel at this time will therefore present no problem of wastefulness or inefficiency.

Mr. Whitaker is an indigent person, lacking the funds necessary to retain counsel. *See* Exhibit 1 (Statement of Inmate Trust Account). Therefore, on behalf of Mr. Whitaker, Mr. Schulman and Mr. Jasuta request that this Court substitute David R. Dow and Katherine C. Black to represent Mr. Whitaker "throughout...all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures...[and] in such competency proceedings and proceedings for executive or other

clemency as may be available to the defendant.” 18 U.S.C. § 3599(e); *see also Harbison v. Bell*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1481 (2009).

Mr. Dow is an attorney licensed to practice law in the State of Texas, the United States District Court for the Southern District of Texas, the United States District Court for the Eastern District of Texas, the United States Court of Appeals for the Fifth Circuit, and the Supreme Court of the United States. Mr. Dow is presently the Cullen Professor at the University of Houston Law Center, and since 1988 has represented more than 70 death row inmates in their post-conviction appeals, including both state and federal habeas corpus proceedings. Mr. Dow is also the litigation director at the Texas Defender Service, a non-profit legal aid organization which specializes in the representation of death-sentenced inmates and defendants facing capital sentencing.

Ms. Black is a staff attorney with the Texas Defender Service. Ms. Black is admitted to practice in this Court, as well as in the United States District Courts for the Northern and Eastern Districts of Texas and the United States Court of Appeals for the Fifth Circuit. Ms. Black is licensed to practice law in the State of Texas and the District of Columbia.

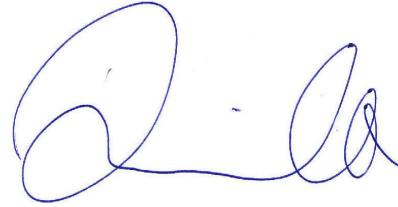
For the aforementioned reasons, undersigned counsel respectfully request that they be permitted to withdraw and that this Court substitute David R. Dow and Katherine C. Black to represent Mr. Whitaker in federal habeas corpus proceedings pursuant to 18 U.S.C. § 3599.

Respectfully submitted,



**John G. Jasuta**

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/s/ David R. Dow

/s/ Katherine C. Black

**DAVID R. DOW**

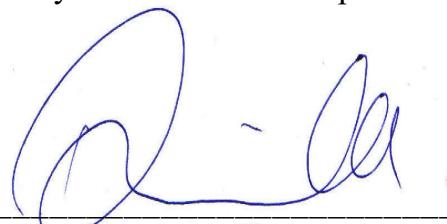
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#### **CERTIFICATE OF CONFERENCE**

I certify that I have conferred with opposing counsel, Matthew D. Ottoway, who has indicated that the Office of the Texas Attorney General takes no position on the matter.

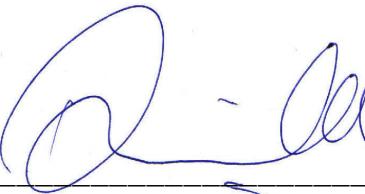


**David A. Schulman**

**CERTIFICATE OF SERVICE**

I certify that on August 27, 2010, a copy of the foregoing pleading was electronically served on counsel for the Respondent by filing the document with the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the court.

Matthew D. Ottoway  
Office of the Texas Attorney General  
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Austin, Texas 78711  
matthew.ottoway@oag.state.tx.us



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**David A. Schulman**

Location...: 0542 - 02

Salesperson: SK000015

Purchaser: WHITAKER, THOMAS BARTLETT

ID Number: 00999522

Item Number

Item Description

00936	STAMP-. 98 CENT	.98	5	4.90	CORR	\$48.00
01044	STAMP .44 CENT	.44	20	8.80	CORR	\$39.20
00223	SAUCE-HABANERO	.65	5	3.25	REGU	\$35.95
00075	RICE-INSTANT POUCH 09	.90	10	9.00	REGU	\$26.95
40010	FUDGE BOMBSTIK	.45	1	.45	REGU	\$26.50
00102	TOOTHPASTE GOLD-WHITENING GEL	2.00	1	2.00	HYGN	\$24.50

Transaction Total: 33 \$60.50

Sales Tax included in above amount: \$ .91

Ending Account Balance: \$393.06

SIGNATURE \_\_\_\_\_ THUMBRPRINT \_\_\_\_\_  
 ALL SALES FINAL

Commissary & Trust Fund  
 POLINSKY UNIT 'B'  
 Commissary Purchase Receipt

Date: 7/27/10  
 Time: 9:55:19  
 Page: 2  
 Housing: 12-D-0 ROW-1 CELL46  
 Begin Spend Limit: \$65.00  
 Spend Limit

Beginning Account Balance: \$453.56  
 Ext. Amt. Class